In my opinion it did by section 3(2) which provides as follows: —

"In any written law and in any document whatsoever, unless the context otherwise requires, any reference to a local authority or the City Council or the Rural Board or any officer thereof, shall be construed as a reference to the Government, Minister or public officer for the time being, under and by virtue of this Ordinance, discharging the functions performed by such local authority, the City Council, Rural Board or any officer thereof, as the case may be, prior to the coming into operation of this Ordinance."

By virtue of this sub-section, any reference to the City Council in the Premiums on Leases Ordinance must be construed as a reference to the Government. The respondents must therefore, to comply with condition (b) of section 2(1) of the Premiums on Leases Ordinance, forthwith present the agreement for inspection to the Government.

Accordingly, in my judgment it was not impossible for the respondents to comply with condition (b). They could and should have complied with it by forthwith presenting the agreement to the Government. In practice the presentation would be made to the appropriate Ministry or, to those more familiar with governmental procedures, the presentation would be made to the Chief Assessor which was in fact done by the respondents' solicitors in the present case. Unfortunately for the respondents, the presentation was not made forthwith within the meaning of condition (b) and accordingly I would allow the appeal with costs here and below.

Tan Ah Tah F.J. and **Buttrose J.** concurred.

Appeal allowed.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

HIGHLANDS MALAYA PLANTATIONS LTD. v. COLLECTOR OF LAND REVENUE, KLANG

[O.C.J. (Raja Azlan Shah J.) April 4, 1968]

[Kuala Lumpur — Civil Application No. 5 of 1967]

Land Laws — Acquisition of land — Claim for compensation — Application for extension of time — Limitation — Land Acquisition Act, 1960, s. 36 & 1st Schedule cl. 4(b).

One of the alternatives put forward by the applicant in support of his motion read: "That the applicant be granted extension of time in which to submit a claim for compensation up to the day following the date on which the Collector of Land Revenue received the applicant's valuer's letter dated 18th June 1964." The collector had adjourned the proceedings on June 25, 1963 and the award was made on May 11, 1964 on the basis that the applicant had omitted to make a claim for compensation.

Held: it is for the land acquisition judge to decide whether the omission to submit the claim for compensation was founded on sufficient reasons. Under the circumstances of the case the motion could not be entertained.

MOTION.

S. D. K. Peddie for the applicants.

Haji Mohamed Azmi bin Dato Haji Kamaruddin (Legal Adviser, Selangor) for the respondent.

Raja Azlan Shah J.: Of the three alternatives put forward by the applicants in support of his motion, it is sufficient for me to state that only the last one merits consideration. It reads:

"That the applicant be granted extension of time in which to submit a claim for compensation up to the day following the date on which the Collector of Land Revenue received the applicant's valuer's letter dated 18th June 1964".

It is clear that the collector adjourned the proceeding on 25th June 1963. The award was made on 11th May 1964 on the basis that the applicant had omitted to make a claim for compensation.

Briefly, the applicants' explanation for the omission is this: confusion had arisen due to the fact that the land gazetted for acquisition in connection with the Damansara water supply scheme had also been gazetted for acquisition for the purpose of a new town, and as such it was not possible to formulate a claim for compensation at that stage because it was not possible to ascertain whether the claim should be submitted in connection with the water supply scheme or in connection with the new town. That proposition was contained in a letter dated 14th April 1964 written by the applicants' valuer to the collector.

That may afford sufficient reason for such omission but, in my opinion, that is a matter for the land acquisition judge to decide. That is clear from the wording of clause 4(b) of the First Schedule which prescribes the amount of compensation which the court can award when deciding a reference made to it under section 36. If the court should then decide that the omission to submit the claim is founded on sufficient reason, it has power to enhance the amount of compensation (see 5th edn. *Sanjiva Row* on Land Acquisition and Compensation, at p. 638).

In the circumstances I do not feel disposed to entertain the motion. It is accordingly dismissed. There will be no order as to costs.

Motion dismissed.

Solicitors: *Skrine & Co.*

GOH BENG SENG v. DOL BIN DOLAH

[O.C.J. (Sharma J.) June 26, 1969]

[Malacca — Civil Suit No. 201 of 1966]

Negligence — Road accident — Driving at speed — Negotiating bend — Resting arm on car window while driving.

Damages — Personal Injuries — Refusal to undergo a second operation — Whether acting unreasonably.

Damages — Personal injuries — Assessment — Method of — Desirability of a lump sum award.

Evidence — Inadmissible evidence — Duty of court to disallow — Statement to police — Criminal Procedure Code (Cap. 21), s. 124 and Evidence Ordinance, 1950, s. 155.

Road Traffic — Driving on public road — Duty to others.

At about 1.30 a.m. on April 19, 1966 there was an accident at 13½ milestone Machap Baru/Durian Tunggal Road involving the plaintiff's car and a lorry driven by the defendant. The facts were: (a) the two vehicles were travelling

in opposite directions, (b) the accident took place at a bend, (c) there was no dividing white line in the centre of the road, (d) the damage to the vehicles was slight and on the offside, (e) the plaintiff was at all relevant time driving the car with his right arm resting on the offside door window with his elbow sticking out, and (f) the plaintiff refused, or was not prepared, to undergo a second operation which might or might not be successful.

Held: (1) in this case, both the plaintiff and the defendant were driving their respective vehicles at a speed much faster than the speed which might be expected of careful drivers while negotiating a sharp bend;

(2) the injuries sustained by the plaintiff were directly attributable to his own negligence;

(3) on the evidence, the plaintiff, was not acting unreasonably in refusing to submit to a second operation;

(4) it was far more desirable to give a one lump sum award in respect of general damages. The award of damages under different heads of damages merely tends to inflate the quantum;

(5) general damages cannot be awarded by way of restitution but only by way of compensation and do include loss of earning. In fact general damages include damages in respect of injury to the plaintiff's health, the loss of his limb, if any, pain and suffering, his inability to return to his normal occupation and every other form of loss which he may suffer and which is not covered by special damages;

(6) it is the duty of the court to disallow all inadmissible evidence even though no objection is taken to its admissibility. It cannot be rendered admissible by failure of counsel to object to it;

(7) the use of a statement made to the police is limited by the express provisions of section 124 of the Criminal Procedure Code (Cap. 21) and therefore it cannot be used as evidence for any other purpose. Such a statement cannot be admitted in evidence merely by circumventing the provisions of the Code on the ground that the statement is relevant under some section of the Evidence Ordinance.

Per Sharma J.: "There can be no territorial or geometrical division of the road. The centre line remains a guide and a reminder only. One's duty is to ensure safety for oneself and for others. The attitude of mind that because the driver coming from the opposite direction is encroaching a few inches of my side of the road, I can treat him as a trespasser and proceed on my half of the road as if it was my exclusive domain and that I am totally immune from liability if I drive within the exact limits of that 'realm' even though I know that an accident may thereby happen on my side of the road, is the attitude of an irresponsible and an irrational being. I owe a duty to others on the road just as others owe a duty to me."

Cases referred to:-

(1) *Watson* v. *Powles* [1967] 3 W.L.R. 1364, 1368.

(2) *Ward* v. *James* [1966] 1 Q.B. 273, 296; [1965] 1 All E.R. 568.

(3) *Rowley* v. *London & North Western Railway Co.* (1873) L.R. 8 Exch. 221, 231.

(4) *Wong Kong* v. *Yee Hup Transport Co. & Ors.* [1966] 2 M.L.J. 234.

(5) *British Westinghouse Electric and Manufacturing Co. Ltd.* v. *Underground Electric Rail Co. of London Ltd.* [1912] A.C. 673 at p. 689.

(6) *Jones* v. *Watnew Comb Reid & Co. Ltd.* (1912) 28 T.L.R. 399.

(7) *Tutton* v. *Majestic Owners* [1909] 2 K.B. 54.

CIVIL SUIT.

Denis Murphy (*A. C. Vohrah* with him) for the plaintiff.

James Chen for the defendant.

Sharma J.: At about 1.30 p.m. on the 19th of April, 1966 there was an accident at the 13½ milestone Machap Baru/Durian Tunggal Road involving motor vehicles BC 7966 and MA 5875. The plaintiff was driving the car BC 7966, a Ford Prefect, and was proceeding towards Durian Tunggal whereas the defendant was the driver of the Ford lorry MA 5875 and was proceeding towards Machap Baru.

As is not uncommon in motor accident cases that come up before the courts, there are two different versions with each party trying to throw the blame on the other. There are, however, certain undisputed or undisputable facts in this case and they are that (a) the two vehicles were travelling in opposite directions, (b) the accident took place at a bend, (c) there is no division white line in the centre of that road, (d) the damage to the two vehicles was slight and on the offside, (e) the plaintiff was at all relevant time driving the car with his right arm resting on the offside door window with his elbow sticking out, and (f) the plaintiff refuses, or is not prepared, to undergo a second operation which may or may not be successful.

The plaintiff says he was driving his car at a speed of only 20 miles per hour. The defendant says he was driving the lorry at 30 miles per hour. There is no speed restriction on that stretch of the road. I am not prepared to believe that the plaintiff was just before the impact, doing only 20 miles per hour. One has only to see the sketch plan and the place where he ultimately stopped the vehicle to be satisfied that he could possibly not be coming very slowly. I find that both the plaintiff and the defendant were driving their respective vehicles at speeds much faster than the speed which may be expected of careful drivers while negotiating a sharp bend. The plaintiff himself admits that there was a sharp bend and the photographs at page 8 of the agreed bundle make it abundantly clear. Both the plaintiff and the defendant were consequently neglectful as far as the question of speed is concerned. The defendant was negotiating a left hand bend and the plaintiff a right hand bend. There was in fact a double bend and as far as the defendant is concerned he was negotiating the second half of this double bend. For the plaintiff it was the start of the double bend. I am inclined to believe that the defendant must already have, relatively speaking, reduced his speed (although he may still be driving at a speed faster than he should have) and the plaintiff, being at the start of the right hand bend, did not slow down. The plaintiff in his evidence said, "when I first saw it (the lorry) it was already on my side of the road. I was then about to reach the bend. The lorry was already on the bend." In cross-examination he continued to say, "I did not apply the brake before the accident. I reduced my speed on reaching the bend. I only released the accelerator a little. I released the accelerator about 32 feet from the bend .... I now admit I was travelling about 30 miles per hour." I think the plaintiff was doing more than 30 miles per hour.

The sketch plan shows the brake mark made by the nearside types of the lorry. This brake mark starts at a distance of 4' 6" from the left edge of the road and although the point where this brake ends is no doubt 5' 9" from the left edge, one has to bear in mind that there is a continuous sharp bend of the

road to the left, and an inference cannot be drawn that the defendant was not trying to swerve the lorry to the left. Such a phenomenon is quite normal and too much weight should not be attached to this increase in distance from the left edge of the road. It cannot indicate that the lorry was moving more towards the centre of the road. When the lorry came to a halt its rear nearside was 2 feet from the left edge of the road and its front nearside 1 foot 4 inches away therefrom.

There can be no territorial or geometrical division of the road. The centre line remains a guide and a reminder only. One's duty is to ensure safety for oneself and for others. The attitude of mind that because the driver coming from the opposite direction is encroaching a few inches of my side of the road, I can treat him as a trespasser and proceed on my half of the road as if it was my exclusive domain and that I am totally immune from liability if I drive within the exact limits of that "realm" even though I know that an accident may thereby happen on my side of the road, is the attitude of an irresponsible and an irrational being. I owe a duty to others on the road just as others owe a duty to me. There is no marked centre line on the Durian Tunggal/Machap Baru road. It is obvious that at the point where the brake mark starts, the offside of the lorry must have been 11 feet from the left edge of the road which is 19 feet wide *i.e.* the offside of the lorry must at that point have been, arithmetically speaking, 1 foot and 6 inches on the wrong side of the road. The defendant cannot escape this obvious inference. I have already said that he must have been doing more than 30 miles per hour at that bend. I am also of the view that the plaintiff himself was driving faster than he says his speed was. The fact that the lorry went on the wrong side of the road indicates its speed. It is one of the factors I have considered. I do hold him negligent. The mere fact, however, that the defendant's lorry went on to the wrong side of the road is not the end of the matter.

The important fact remains that in this case there was not much serious damage to the vehicles. The impact between the vehicles was not heavy. The only serious injury sustained by the plaintiff, and the resultant deformity and disability which he has thereby suffered, is that of the right elbow. But for this injury the plaintiff could not be entitled to any substantial sum by way of damages. The question which I naturally asked myself was, "What caused this injury?" The plaintiff on his own admission was resting his arm on the window while he was driving the car to this unfortunate accident. He kept it there with his elbow sticking out all the while even when he saw the lorry coming right towards his car. In cross-examination he said, "I did move my elbow in to the left when I swerved to the left." Even if I were to believe that he did try to swerve the car to the left, his elbow would have gone farther out rather than in. It was a very neglectful way of driving the car. The plaintiff himself was totally careless of the safety of his own arm It was his negligence which principally and directly brought upon him the injuries he complains of. There could, in the circumstances of this case and on the evidence before me, have been no injury to the plaintiff's arm if he was driving with his right arm safely within the car. I hold that the injuries sustained by the plaintiff are directly attributable to his own negligence.

I have held that the plaintiff is 50% to be blamed and that the other 50% of the blame falls on the defendant. If I have erred, and if I were to consider the arm injury alone, I think I have erred in favour of the plaintiff.

I have awarded the plaintiff $8,590 by way of damages. I take this opportunity to observe that at the time I made the award the total special damages (discounting the contributory negligence of the plaintiff) which I said the plaintiff was entitled to were recorded as $4,380. There was an error in the total and this when brought to my notice I directed the assistant registrar immediately to rectify the error at the time the draft order was submitted to him for approval. The total, in fact, should be $5,380 instead of $4,380.

In writing this judgment I have had the occasion and the opportunity to consider the matter afresh. In fact, I will be right if I say that I have now found time to read again, rethink and to further deliberate upon the evidence. I shall be failing in my duty if I did not touch upon one or two matters on which I may have erred. I shall proceed to deal with them.

Inspector Ong Ah Hing (P.W. 2) was called as a witness by the plaintiff and he produced the investigation papers into Machap Baru Police Report No. 29 of 1966 (A2). There was no objection to the production of the investigation papers which contained statements of various witnesses taken during the course of police investigations. In another case for damages arising out of a road accident which had subsequently come up before me objection was taken by the counsel in that case to the admissibility of statements of witnesses made during the course of a police investigation and I had an opportunity to consider the matter. The mere fact, however, that counsel for the defendant in this case did not object to the admissibility of the statements of witnesses made to the police, does not excuse me from excluding such evidence if in fact and law it is not admissible. It is the duty of the court to disallow all inadmissible evidence even though no objection is taken to its admissibility. Inadmissible evidence remains inadmissible. It cannot be rendered admissible by failure of counsel to object to it. Section 124(1) of the Straits Settlements Criminal Procedure Code (Cap. 21) reads as follows: —

"No statement made by any person to a police officer in the course of police investigation made under this Chapter shall be signed by the person making it, *nor shall such statement*, save as herein provided, *be used as evidence*."

This is the same as section 113(i) of the F.M.S. Criminal Procedure Code (Cap. 6). The relevant section of the Indian Criminal Procedure Code is section 162(1) which reads as follows: —

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided)

at any enquiry or trial in respect of any offence under investigation at the time when such statement was made: Provided that when any witness is called...."

Section 162(1) of the Indian Criminal Procedure Code found its beginnings in section 145 of Act XXV of 1861. In its present form section 162(1) of the Indian Criminal Procedure Code is different in its import and effect from section 124(1) of the Straits Settlements Criminal Procedure Code. I do not find it necessary to fall back on judicial authority to fathom or find the meaning of the words "used as evidence" found in section 119 (paragraph 3) of the Indian Code of 1872 or the equivalent sections of that country's Codes of 1882 and 1898. The meaning and the effect of section 124(1) of the Straits Settlements Criminal Procedure Code seems simple and straight. A statement made to the police officer in the course of a police investigation *cannot be used as evidence* except for the very limited purposes stated in sub-section (2) of section 124. In other words it is not evidence at all and its use is not permissible in any other proceeding which does not fall within the ambit or contemplation of section 124. If this statement cannot be used how can such a statement be proved in evidence? Section 155 of the Evidence Ordinance, 1950 contemplates impeachment of a witness by proof of his former statement. The former statement itself must first be admissible in the proceedings in which it is sought to be proved and if the statement made to the police is not admissible in those proceedings its use under section 155 of the Evidence Ordinance cannot be made. The use of a statement made to the police is made limited by the express provisions of section 124 of the Straits Settlement Criminal Procedure Code and I am of the view that it cannot be used *as evidence* for any other purpose. It may be urged that the statement of a witness made to the police in the course of an investigation amounts to conduct and could thus be admissible under section 8 of the Evidence Ordinance. The argument is attractive but fallacious for the simple reason that the conduct itself can only be admitted as evidence. It is the statement *viewed as* conduct which is sought to be made admissible. But if the statement itself is not admissible there is nothing admissible left to view. This "view" formed is only one of the resulting or concomitant aspects of the statement itself. I have come to the conclusion that such a statement cannot be admitted in evidence merely by circumventing the provisions of section 124(1) on the ground that the statement is relevant under some other section of the Evidence Ordinance. I was consequently wrong in admitting exhibit P2.

Mr. Murphy with his customary charm and persuasiveness of argument strongly impressed upon me the desirability of the courts awarding different sums under different heads or categories of damage sustained. I must confess I was swayed by his argument although on reflection I consider that it was far more desirable to give a one lump sum award in respect of general damages. The award of damages under different heads of damage merely tends, in my view, to inflate the quantum. The argument which Mr. Murphy put before me was put forward in the case of *Watson* v. *Powles*[1] and I can do no better than to repeat what Lord Denning M.R. said in that case:

"We have often had to consider such a suggestion. In the old days, when damages were assessed by juries, there could be no question of subdivision. A jury gave one award of general damage. In modern times, when damages are assessed by judges sitting alone, this court has discouraged judges from going too much into detail. When I was a judge of first instance, this court told me it was a mistake to subdivide the amount. On the whole I think this is right. There is only one cause of action for personal injuries, not several causes of action for the several items. The award of damages is, therefore, an award of one figure only, a composite figure, made up of several parts. Some of the parts may be capable of being estimated in terms of money such as loss of future earnings. Others cannot truly be estimated in money at all but must proceed on a conventional basis, such as compensation for pain and suffering and loss of amenities: see *Ward* v. *James*.[2] At the end all the parts must be brought together to give fair compensation for the injuries.

If a man is awarded a very large sum for loss of future earnings, it may help to compensate him for his future pain and suffering. If he has no loss of earnings, he may be more generously compensated for pain and suffering. And so forth. Just as a jury in the old days would award an overall figure, so may a judge today. The invariable direction to juries in fatal accident cases was "that they must not attempt to give damages to the full amount of a perfect compensation for the pecuniary injury, but must take a reasonable view of the case, and give what they consider, under all the circumstances, a fair compensation": see *Rowley* v. *London & North Western Railway Co.* [3] by Brett J. Likewise in personal injury cases a judge is to give what is, in all the circumstances, a fair compensation. Every judge, when working out the sum, notes down the item and calculates so much for loss of future earnings, so much for pain and suffering, and the like. That gives him a starting point. But there are so many uncertainties and intangibles involved that in the end he has to gather all the items together and give a round sum. So I do not agree with Mr. Howe's contention. It is not the judge's duty to divide up the total award into separate items. He may do so if he thinks it proper and helpful, but it is not his duty to do so."

It is apparent from the evidence of Mr. Ratnasingam (P.W. 1) the orthopaedic surgeon, that the operation first performed on the plaintiff was not properly performed. The question which naturally arises in this case is whether the defendant is to pay for the consequences of the act of a third person not connected with the cause of injury to the plaintiff in the accident. When I gave my decision on the 29th May, 1969 I had ignored any possible effect which the lack of skill on the part of the surgeon who performed the operation on the plaintiff may have on the question of mitigation of damages and I now proceed to deal with that aspect of the matter. The law as to the duty of the plaintiff to take all reasonable steps to mitigate the amount of damage is the same whether damages are claimed in respect of breach of contract or in respect of tort (*Wong Kong* v. *Yee Hup Transport Co. & Ors.*[4]; *British Westinghouse Electric and Manufacturing Co. Ltd.*, v. *Underground Electric Rail Co. of London Ltd.*[5] *per* Haldane L.C.) A person who has sustained injuries as a result of an accident should not do anything which may aggravate those injuries and it is his duty to follow competent medical advice. In *Jones* v. *Watney, Comb Reid & Co. Ltd.*[6] Lush J. observed:

"A person who is suffering from the effects of an accident is not, of course, entitled to do everything which an ordinary person might reasonably attempt. If a man suffering from a sprained leg wishes to win a prize in a high-jump competition

and proceeds to endeavour to win it, and thereby makes his leg so much worse that it takes an additional six months to recover, he is only entitled to damages for such part of his suffering as was not due to such heedless conduct. On the other hand, it could scarcely be suggested that the fact of a man who is suffering from the injury to his eye glancing at a newspaper occasionally before his eye has quite regained its usual strength would be wanton, heedless, or careless action on his part. The jury must look at all the circumstances of the case, the medical advice received, the need for action, the usual character of what is actually done, and the precautions taken during the doing of it. The injured person need not act with perfect knowledge and ideal wisdom, but, on the other hand, cannot claim damages for such injuries as are really due to wanton, heedless, or careless conduct on his own part. If what is done reasonably and carefully does augment the injuries, that may be regarded as a natural consequence of the accident."

The question is whether the continued disability of the plaintiff is attributable exclusively to the accident or is due to his own unreasonableness in refusing to submit to a second operation. The refusal of the plaintiff to undergo a second operation was not only not pleaded but also Mr. Ratnasingam (P.W. 1) was not cross-examined at all on the matter. Mr. Ratnasingam, naturally, could not guarantee any effective results in the second operation, if performed, and the plaintiff did not want to undergo such an operation because to him success of the operation was not certain. I do not consider that on that meagre evidence before me I can hold that the plaintiff was acting unreasonably (*Tutton* v. *Majestic Owners*[7]). There may be cases where due to the act of the third person the injury may be aggravated and the circumstances may render the damage too remote. Damages may, in fact, be liable to be reduced on grounds of contributory negligence, remoteness or failure to mitigate, and it may often be difficult to draw a line between the respective areas of these grounds. I am fortunately spared that task in this case.

The plaintiff was essentially a sub-contractor and although in his evidence he did state that he was working as a mason himself in the execution of these sub-contracts, yet I do not attach very much weight or significance to that part of his statement. A sub-contractor is likely to make more gain in devoting his time to procuring sub-contracts, creating contacts and generally supervising the work than by being pinned down to the manual labours of a mason. At the most the plaintiff might have on occasions rendered some short-time assistance or have temporarily acted as a relief mason and I have taken that into account in assessing the damages. I have seen the plaintiff and his arm. He may not be able to perform the duties of a mason but that does not mean he is incapable of doing some other work or earn his livelihood in some other field of activity.

I have considered the authorities on quantum quoted by Mr. Murphy. General damages cannot be awarded by way of restitution but only by way of compensation and do include loss of earnings. In fact general damages include damages in respect of injury to the plaintiff's health, the loss of his limb, if any, pain and suffering, his inability to return to his normal occupation and every other form of loss which he may suffer and which is not covered by special damages. I am of the view that I have in fact made quite a liberal award to the plaintiff. It is not necessary for me to analyse how I have arrived at the various figures.

Order accordingly.

Solicitors: *Murphy & Dunbar; Laycock & Ong.*

LIN AH MOY v. LEE CHENG HOR & ORS.

[F.C. (Ong C.J. (Malaya), Gill and Ali F.JJ.) July 21, 1969]

[Ipoh — Federal Court Civil Appeal No. X. 24 of 1969]

Companies — Private holding company — Transfer of shares from brother to brother — Family arrangement.

Family arrangement — Transfer of shares — Consideration — Presumption of advancement — Resulting trust — Evidence Ordinance, 1950, s. 92.

This appeal arose out of an action concerning a dispute in a Chinese family over 300 $1 shares in the capital of Rimau Omnibus Co. Ltd., a private holding company. The family consisted of five brothers named Ong Kong Chu, Ong Kong Seng, Ong Kong Pong, Ong Kong Chuan and Ong Kong Chee in order of seniority in age. Prior to 1954 the first four brothers were the registered owners of 1,465, 300, 245 and 342 shares respectively in the holding company, with the youngest brother having no shares in his name at that time. On February 16, 1954 the eldest brother Ong Kong Chu transferred 1,265 of his shares to the youngest brother Ong Kong Chee, keeping 200 shares in his name to enable him to retain his position as a director of the company. Within the next two days Ong Kong Seng, Ong Kong Chuan and Ong Kong Pong also transferred their entire holdings to Ong Kong Chee, with the result that the eldest brother in the family remained the registered owner of 200 shares and the youngest brother (hereinafter referred to as the first defendant) became the registered owner of 2,152 shares. On April 26, 1955 the first defendant executed an instrument appointing Ong Kong Chu as his attorney in respect of the shares transferred to him with powers, *inter alia*, to receive and give effectual discharges for all moneys derived therefrom and "to sell assign transfer and to mortgage for any purpose and for such price or other consideration (whether pecuniary or not) or sum of money and upon such terms and conditions the said shares as the said attorney shall think fit." This power of attorney was never revoked and remained operative until the first defendant executed a transfer of the entire 2,152 shares to Lin Ah Moy (f) (hereinafter referred to as the second defendant), the wife of Ong Kong Chu, on or about December 10, 1959. The four transfers in 1954 were expressed to be for a consideration of $2 for a $1 share and the total amount purported to have been paid by the first defendant was $4,304. The transfer in 1959 of the 2,152 shares from the first defendant to the second defendant was also expressed to be in consideration for the same amount of $4,304. On April 27, 1964 Ong Kong Seng commenced this action as the original plaintiff against the first and second defendants claiming for a declaration that the 300 $1 fully paid up shares and numbered from 317 to 616 were held by each of the defendants as a trustee for him, and for an account of the dividends and income received by them during the relevant period. In his statement of defence the first defendant admitted that the 300 shares were transferred to him in trust for the plaintiff and that all dividends received during the period when the said shares stood registered in his name were paid to Ong Kong Chu who, as the then head of the family, was keeping a joint family account. He did not deny paragraph 4 of the plaintiff's statement of claim to the effect that in or about the month of December, 1959 he, by the direction of the plaintiff, transferred the said shares into the name of the second defendant with her concurrence, to the intent that the same should be held by her as a trustee for and on behalf of the plaintiff. The second defendant denied in her statement of defence that the said shares were transferred to her to be held by her in trust for the plaintiff, her defence being that she purchased 2,152 shares, amongst